IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 606 OF 2005

IN

SUIT NO. 815 OF 2005

High-Definition Television
Pvt. Ltd., .. Plaintiff.

vs.

Zee Telefilms Ltd., .. Defendants.

Mr. D.D. Madan, Sr. Adv. i/by Kishore Thakordas & Co. for plaintiff.

Mr. Virag Tulzapurkar, Sr. Adv. i/by Ghanekar & Co. for Defendants.

CORAM : S.U.KAMDAR, J.

DATE : 20th February, 2006.

P.C.

. The present suit is filed for recovery of a sum of Rs. 72,21,756/- comprising of principal amount of Rs. 57,75,000/- and interest at the rate of 18% per annum of the sum of Rs.14,46,756. The claim arises under written agreement which was executed by and between the parties being agreement dated 26.2.2001 for telecast of a "Mushaira" programme produced by the plaintiff herein and

telecast by the defendants. Under the terms and conditions of the agreement it was provided that the defendants shall pay a sum of Rs. 1,75,000/- each of the episodes. It is the case of the plaintiff that the plaintiff has delivered 51 episodes and out of which they have received payment for 18 episodes and the balance claim is made in the present suit. The plaintiff has produced letter dated 27.12.2001 being Exhibit U to the plaint inter alia indicating confirmation of liability and confirmation of delivery of 51 episodes.

2. The learned counsel for the defendants has raised three defences. Firstly, it has ben contended that the summons for judgement is taken out on 27.12.2005 though the suit is filed on 31.3.2005. The writ of summons was served on the defendants and the defendants have filed vakalatnama on 18.8.2005. It has been contended that there is a delay in taking out summons for judgment under Rule 227 i.e. the summons for judgment is taken out beyond a period of 6 months prescribed therein from the date of the filing of the suit and thus the same to be dismissed. In the present case the suit is filed on 31.3.2005 and the summons for judgement is taken out on 27.9.2005 thus, the summons for judgment is taken out within a period of six months from the date of filing of the suit, and, therefore, the contention raised by the learned counsel or the

defendants that the summons for judgment is beyond the period of six months has no merit and, therefore, the same cannot be accepted.

3. The next contention raised is that there is no agreement to pay interest and therefore the claim raised of the interest amount cannot be raised in the present suit. It has been further alternatively contended that even if the plaintiff is entitled to interest under the Interest Act then also the plaintiff cannot claim the same at the rate of 18% per annum as the same is not current rate of interest. So far as the said contention is concerned, the learned counsel for the plaintiffs restricts the claim in the present suit from the date of filing of the suit to 10% per annum and gives up the balance claim of interest in the suit. I accept the statement of the learned counsel for the plaintiff's and accordingly I direct modification of the claim by computing the rate of interest at 10% only on the aforesaid amount. The plaintiff is given leave to amend. Amendment to be carried out within one week from today.

4. Now, turning tot he matter on merits, it is the contention of the learned counsel for the defendants that the true and correct position is that as per agreement Rs. 1,75,000/- is payable only on the telecast of each of the episodes. It is

his case that since the defendants have telecast only 19 episodes the plaintiff is not entitled to recover the amount for the balance of the episodes. The learned counsel for the defendants contends that clause 3.1 on its proper interpretation it is clear that the amount has to be paid within 30 days after the first broadcast of the said programme thus it means that as and when episode is broadcast the plaintiffs will be entitled to the amount for the said episode. Alternatively, the learned counsel for the defendants has contended that the defendants have received only 19 episodes from the plaintiff and have admittedly paid for 18 episodes and, therefore, only money due and payable is in respect of one episode. The balance episodes are not received at all. The learned counsel for the defendants contends that the letter dated 27.12.2001 cannot be accepted as proof of delivery on admission of the liability because the officer who has signed the said letter has no authority to do so since she was dealing with programming section and not with the accounts section.

5. I have considered the aforesaid contentions of the learned counsel for the defendants and I find no merits therein. Firstly, on a plain and simple reading of clause 3.1 it leaves no manner of doubt that what is contemplated is the payment for episode within 30 days after the first broadcast of the

programme meaning thereby that once the broadcast of the programme is commenced and the period of 30 days expired then payments will become due for each and every episode as soon as the same are delivered. It is because the word used is first broadcast and not broadcast of each and every episode. The said clause 3(i) reads as under :-

> 3. CONSIDERATION:
>
> i) In consideration of the services rendered by the Party No. 2 as stipulated above, the Party No. 1 shall pay to the party No. 2 a total consideration of Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousand only) per episode within 30 (thirty) days after the first broadcast of the said Programme."

If the contention of the learned counsel for the defendants is accepted then it would amount to rewriting of the contract or substituting the words after the product with programme with the words "on the broadcast of each of the said episodes" It is well settled that it is not permissible to interpret the contract in such a manner that it requires to be rewritten. Apart from the aforesaid if the contention of the learned counsel for the defendants is accepted then in that event it is likely to lead to an absurd interpretation in which the plaintiff

will not be able to recover the amount from the defendants merely by virtue of non-broadcasting of the said programme by the defendants themselves. In my opinion, the interpretation of the clause cannot be made in such a manner that results in absurdity and, therefore, I am of the view on the true and correct interpretation of clause 3 (i) the amount has to be paid on expiry of 30 days from the broadcast of first episode and for remaining episode payments will be due on its delivery. In that light of the matter, I do not find any merit in the contention raised by the defendants and I reject the same. The alternate contention raised by the defendants that they received only 19 episodes also cannot be accepted because the plaintiff has produced acknowledgement of receipt of each of the subsequent episodes and, therefore, the contention of the defendants that the balance episodes are not received has no merit whatsoever. In so far as Exhibit U being letter dated 27.12.2001 is concerned, there is a clear admission of acknowledgement of liability. The contention that the said officer has no authority cannot be accepted at the face value particularly in view of the fact that said Ms. Simi Malhotra has been dealing in respect of the said programme "Maifil-E-Mushaira". In light of the aforesaid, there is no substance in any of the contentions raised by the defendants. However, with a view to give an opportunity to the

defendants to defend, I direct the defendant to deposit a sum of Rs. 60 lacs in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

6. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.